

The Honorable Thomas O. Rice

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No. 115, Richard D. Cole, Charles V. Salina and
Michael Cashion

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

MICHAEL EUGENE JOSEPH
POOLE,

Plaintiff,

vs.

ESTATE OF CRAIG FIGLEY and
KATHERINE E. KIPP, Personal
Representative of the Estate of Craig
Figley, as liable for decedent Defendant
CRAIG FIGLEY, COLVILLE
SCHOOL DISTRICT NO. 115,
RICHARD D. COLE, CHARLES V.
SALINA, and MICHAEL CASHION,

Defendants.


Case No. 2:23-cv-00079-TOR

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted.

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& LACKIE, P.S.**
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1 Accordingly, the parties hereby stipulate to and petition the court to enter the
2 following Stipulated Protective Order. The parties acknowledge that this
3 agreement does not confer blanket protection on all disclosures or responses to
4 discovery, the protection it affords from public disclosure and use extends only to
5 the limited information or items that are entitled to confidential treatment under
6 the applicable legal principles, and it does not presumptively entitle parties to file
7 confidential information under seal.
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11 2. “CONFIDENTIAL” MATERIAL
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13 “Confidential” material shall include the following documents and tangible
14 things produced or otherwise exchanged:
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16 (a) All medical and mental health records of Plaintiff that would
17 otherwise be confidential under the Health Insurance Portability and
18 Accountability Act of 1996 (HIPAA), including medical and mental health
19 records generated through the course of this litigation;
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22 (b) All educational records of Plaintiff that would otherwise be
23 confidential under the Family Education Records Privacy Act, Family Education
24 Records Privacy Act (FERPA);
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26 (c) All records that include the social security numbers of the
27 Plaintiff;
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1 (d) All records that contain private financial information of the
2 Plaintiff, including bank account information; and
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4 (e) Any records or communication maintained by Colville School
5 District about Plaintiff that contain information about other Colville School
6 District students that would not be subject to disclosure to third parties under
7 either FERPA or the Washington Public Records Act, Chapter 42.56 of the
8 Revised Code of Washington; and
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11 (f) Any portions of personnel files (as that term is used in Revised
12 Code of Washington Sections 49.12.240 through 49.12.260) of current or former
13 Colville School District staff that would not be subject to disclosure to third
14 parties under the Washington Public Records Act, Chapter 42.56 of the Revised
15 Code of Washington.
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19 (g) Records maintained by any entity or agency, including but not
20 limited to the Stevens County Sheriff's Office, the Stevens County Superior
21 Court, the Stevens County Prosecutor's Office and the State of Washington that
22 identify any alleged victims of Craig Figley or other minors.
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25 3. SCOPE

26 The protections conferred by this agreement cover not only confidential
27 material (as defined above), but also (1) any information copied or extracted from
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1 confidential material; (2) all copies, excerpts, summaries, or compilations of
2 confidential material; and (3) any testimony, conversations, or presentations by
3 parties or their counsel that might reveal confidential material.
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5 However, the protections conferred by this agreement do not cover
6 information that is in the public domain or becomes part of the public domain
7 through trial or otherwise.
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10 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

11 4.1 Basic Principles. A receiving party may use confidential material that
12 is disclosed or produced by another party or by a non-party in connection with this
13 case only for prosecuting, defending, or attempting to settle this litigation.
14 Confidential material may be disclosed only to the categories of persons and under
15 the conditions described in this agreement. Confidential material must be stored
16 and maintained by a receiving party at a location and in a secure manner that
17 ensures that access is limited to the persons authorized under this agreement.
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22 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the designating party, a
24 receiving party may disclose any confidential material only to:
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1 (a) the receiving party's counsel of record in this action, as well as
2 employees of counsel to whom it is reasonably necessary to disclose the
3 information for this litigation;
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5 (b) the officers, directors, and employees (including in house counsel)
6 of the receiving party to whom disclosure is reasonably necessary for this
7 litigation, unless the parties agree that a particular document or material produced
8 is for Attorney's Eyes Only and is so designated;
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11 (c) experts and consultants to whom disclosure is reasonably
12 necessary for this litigation and who have signed the "Acknowledgment and
13 Agreement to Be Bound" (Exhibit A);
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16 (d) the court, court personnel, and court reporters and their staff;

17 (e) copy or imaging services retained by counsel to assist in the
18 duplication of confidential material, provided that counsel for the party retaining
19 the copy or imaging service instructs the service not to disclose any confidential
20 material to third parties and to immediately return all originals and copies of any
21 confidential material;
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25 (f) during their depositions, witnesses in the action to whom
26 disclosure is reasonably necessary and who have signed the "Acknowledgment
27 and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the
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30 STIPULATED PROTECTIVE ORDER - page 5

1 designating party or ordered by the court. Pages of transcribed deposition
2 testimony or exhibits to depositions that reveal confidential material must be
3 separately bound by the court reporter and may not be disclosed to anyone except
4 as permitted under this agreement;
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7 (g) the author or recipient of a document containing the
8 information or a custodian or other person who otherwise possessed or knew the
9 information.
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11 4.3 Filing Confidential Material. Before filing confidential
12 material or discussing or referencing such material in court filings, the filing party
13 shall confer with the designating party to determine whether the designating party
14 will remove the confidential designation, whether the document can be redacted,
15 or whether a motion to seal or stipulation and proposed order is warranted. During
16 the meet and confer process, the designating party must identify the basis for
17 sealing the specific confidential information at issue, and the filing party shall
18 include this basis in its motion to seal, along with any objection to sealing the
19 information at issue. Failure to satisfy this requirement will result in the motion
20 to seal being denied, in accordance with the strong presumption of public access
21 to the Court's files.
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1 4.4 Parties may file documents marked as confidential without
2 conferring with the other parties so long as the documents are redacted such that
3 all personally identifiable information and/or confidential information has been
4 redacted.
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7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for Protection.
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10 Each party or non-party that designates information or items for protection under
11 this agreement must take care to limit any such designation to specific material
12 that qualifies under the appropriate standards. The designating party must
13 designate for protection only those parts of material, documents, items, or oral or
14 written communications that qualify, so that other portions of the material,
15 documents, items, or communications for which protection is not warranted are
16 not swept unjustifiably within the ambit of this agreement.
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20 Mass, indiscriminate, or routinized designations are prohibited.
21 Designations that are shown to be clearly unjustified or that have been made for
22 an improper purpose (*e.g.*, to unnecessarily encumber or delay the case
23 development process or to impose unnecessary expenses and burdens on other
24 parties) expose the designating party to sanctions.
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1 If it comes to a designating party's attention that information or items that
2 it designated for protection do not qualify for protection, the designating party
3 must promptly notify all other parties that it is withdrawing the mistaken
4 designation.
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7 5.2 Manner and Timing of Designations. Except as otherwise provided
8 in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as
9 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
10 protection under this agreement must be clearly so designated before or when the
11 material is disclosed or produced.
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13
14 (a) Information in documentary form: (*e.g.*, paper or electronic
15 documents and deposition exhibits, but excluding transcripts of depositions or
16 other pretrial or trial proceedings), the designating party must affix the word
17 "CONFIDENTIAL" to each page that contains confidential material. If only a
18 portion or portions of the material on a page qualifies for protection, the producing
19 party also must clearly identify the protected portion(s) (*e.g.*, by making
20 appropriate markings in the margins).
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22 (b) Testimony given in deposition or in other pretrial proceedings:
23 the parties and any participating non-parties must identify on the record, during
24 the deposition or other pretrial proceeding, all protected testimony, without
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1 prejudice to their right to so designate other testimony after reviewing the
2 transcript. Any party or non-party may, within fifteen days after receiving the
3 transcript of the deposition or other pretrial proceeding, designate portions of the
4 transcript, or exhibits thereto, as confidential. If a party or non-party desires to
5 protect confidential information at trial, the issue should be addressed during the
6 pre-trial conference.
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10 (c) Other tangible items: the producing party must affix in a
11 prominent place on the exterior of the container or containers in which the
12 information or item is stored the word “CONFIDENTIAL.” If only a portion or
13 portions of the information or item warrant protection, the producing party, to the
14 extent practicable, shall identify the protected portion(s).
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17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
18 failure to designate qualified information or items does not, standing alone, waive
19 the designating party’s right to secure protection under this agreement for such
20 material. Upon timely correction of a designation, the receiving party must make
21 reasonable efforts to ensure that the material is treated in accordance with the
22 provisions of this agreement.
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26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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1 6.1 Timing of Challenges. Any party or non-party may challenge a
2 designation of confidentiality at any time. Unless a prompt challenge to a
3 designating party's confidentiality designation is necessary to avoid foreseeable,
4 substantial unfairness, unnecessary economic burdens, or a significant disruption
5 or delay of the litigation, a party does not waive its right to challenge a
6 confidentiality designation by electing not to mount a challenge promptly after the
7 original designation is disclosed.
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11 6.2 Meet and Confer. The parties must make every attempt to resolve any
12 dispute regarding confidential designations without court involvement. Any
13 motion regarding confidential designations or for a protective order must include
14 a certification, in the motion or in a declaration or affidavit, that the movant has
15 engaged in a good faith meet and confer conference with other affected parties in
16 an effort to resolve the dispute without court action. The certification must list the
17 date, manner, and participants to the conference. A good faith effort to confer
18 requires a face-to-face meeting or a telephone conference.
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24 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
25 court intervention, the designating party may file and serve a motion to retain
26 confidentiality. The burden of persuasion in any such motion shall be on the
27 designating party. Frivolous challenges, and those made for an improper purpose
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30 STIPULATED PROTECTIVE ORDER - page 10

(e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the

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1 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
2 all unauthorized copies of the protected material, (c) inform the person or persons
3 to whom unauthorized disclosures were made of all the terms of this agreement,
4 and (d) request that such person or persons execute the “Acknowledgment and
5 Agreement to Be Bound” that is attached hereto as Exhibit A.
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8 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
9 PROTECTED MATERIAL

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11 When a producing party gives notice to receiving parties that certain
12 inadvertently produced material is subject to a claim of privilege or other
13 protection, the obligations of the receiving parties are those set forth in Federal
14 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
15 whatever procedure may be established in an e-discovery order or agreement that
16 provides for production without prior privilege review. The parties agree to the
17 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.
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21 10. NON-TERMINATION AND RETURN OF DOCUMENTS
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23 Within 60 days after the termination of this action, including all appeals,
24 each receiving party must return all confidential material to the producing party,
25 including all copies, extracts and summaries thereof. Alternatively, the parties may
26 agree upon appropriate methods of destruction.
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1 Notwithstanding this provision, counsel are entitled to retain one archival
2 copy of all documents filed with the court, trial, deposition, and hearing
3 transcripts, correspondence, deposition and trial exhibits, expert reports, attorney
4 work product, and consultant and expert work product, even if such materials
5 contain confidential material.
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8 The confidentiality obligations imposed by this agreement shall remain in
9 effect until a designating party agrees otherwise in writing or a court orders
10 otherwise.
11

12
13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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15 DATED this 4th day of May, 2023.

16 EVANS, CRAVEN & LACKIE, P.S.
17 By: s/Michael E. McFarland, Jr.
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25 BUZZARD O'ROURKE, P.S.
26

27 By: s/Shane O'Rourke
28 SHANE O'ROURKE, #39927
29 Attorneys for Plaintiff

30 STIPULATED PROTECTIVE ORDER - page 13

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: May 5, 2023.



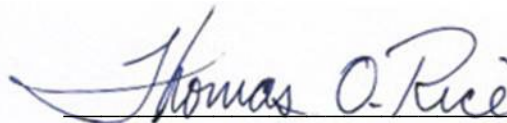

The Honorable Thomas O. Rice
United States District Court Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____
[print or type full name], of _____
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was issued by the
United States District Court for the Eastern District of Washington on _____
in the case of *Michael Eugene Joseph Poole v. Colville School District, et al.*, Cause No. 2:23-
cv-00079-TOR.

I agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me to sanctions
and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Eastern District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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